

ORIGINAL

1983 FORM Rev. 01/2008

CC: JMS/RT/ELN

David White Reg. No. 06317-122

Name and Prisoner/Booking Number

FDC Honolulu

Place of Confinement

P.O. Box 30080

Mailing Address

Honolulu, Hawaii 96820

City, State, Zip Code

FILED IN THE
UNITED STATES DISTRICT COURT
DISTRICT OF HAWAII

MAY 09 2022

at 10 o'clock and 30 min. A M
CLERK, U.S. District Court

25

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF HAWAII

David White

(Full Name of Plaintiff)

Case No. 22-00159 JMS-RT

(To be supplied by the Clerk)

VS.

Dr. Kwon

PRISONER CIVIL RIGHTS COMPLAINT

☐ Original Complaint

☒ First Amended Complaint

☐ Second Amended Complaint

(Full Names of Defendants; DO NOT USE *et al.*)

A. JURISDICTION

1. Jurisdiction is invoked pursuant to:

a. ☐ 28 U.S.C. § 1343(a)(3); 42 U.S.C. § 1983

b. ☒ 28 U.S.C. § 1331; Bivens v. Six Unknown Federal Narcotics Agents, 403 U.S. 388 (1971)

c. ☐ Other: (Please Specify)

2. Plaintiff: David White

Institution/city where violation occurred: FDC Honolulu

3. First Defendant *: Dr. Kwon

This defendant is a citizen of (state and county) Hawaii Oahu,
and is employed as:

Doctor / Head of Health Services at FDC Honolulu

(Position and Title)

(Institution)

This defendant is sued in his/her X individual official capacity (check one or both). Explain how

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this defendant was acting under color of law:

The Plaintiff was and is directly in the care of Dr. Kwon

4. Second Defendant: _____

This defendant is a citizen of (state and county) _____
_____, and is employed as:

_____ at _____
(Position and Title) (Institution)

This defendant is sued in his/her ___ individual ___ official capacity (check one or both). Explain how this defendant was acting under color of law:

5. Third Defendant: _____

This defendant is a citizen of (state and county) _____
_____, and is employed as:

_____ at _____
(Position and Title) (Institution)

This defendant is sued in his/her ___ individual ___ official capacity (check one or both). Explain how this defendant was acting under color of law:

(If you would like to name additional defendants, make a copy of this (blank) page and provide the necessary information.)

* A defendant may be named in an individual or official capacity, or both. To sue a defendant in their **individual capacity**, you must be able to state facts showing that the defendant was actually involved in violating your rights. A suit against a defendant in their **official capacity** is in reality a suit against the office or position the defendant holds. Only injunctive relief is available in an official capacity suit against a state official. This is because the **Eleventh Amendment** confers immunity upon the state or its officials against monetary damages resulting from federal court litigation.

"Color of law" refers to whether the person is a private party or an employee, official, or agent of a state, county, city, or the federal government. There can be no civil rights action under § 1983 unless the defendant was "acting under color of law." After the color of law requirement is met, then it must be determined in which capacity the defendant is being sued.

B. PREVIOUS LAWSUITS

1. Have you brought any other lawsuits while a prisoner: ☐ Yes ☒ No
2. If your answer is yes, how many?: _____ Describe the lawsuit in the spaces below.
3. First previous lawsuit:

- a. Plaintiff _____
Defendants _____
- b. Court and Case Number (if federal court, identify the district; if state court, identify the county):

- c. Claims raised: _____
- d. Disposition (For example: Was the case dismissed? Was it appealed? Is it still pending?)

- e. Approximate date of filing lawsuit _____
- f. Approximate date of disposition _____

4. Second previous lawsuit:

- a. Plaintiff _____
Defendants _____
- b. Court and Case Number (if federal court, identify the district; if state court, identify the county):

- c. Claims raised: _____
- d. Disposition (For example: Was the case dismissed? Was it appealed? Is it still pending?)

- e. Approximate date of filing lawsuit _____
- f. Approximate date of disposition _____

5. Third previous lawsuit:

- a. Plaintiff _____
Defendants _____
- b. Court and Case Number (if federal court, identify the district; if state court, identify the county):

- c. Claims raised: _____
- d. Disposition (For example: Was the case dismissed? Was it appealed? Is it still pending?)

- e. Approximate date of filing lawsuit _____
- f. Approximate date of disposition _____

(If you have filed more than three lawsuits, make a copy of this (blank) page and provide the necessary information.)

6. Have you filed any actions in federal court that were dismissed because they were frivolous, malicious, or failed to state a claim upon which relief could be granted? ___ Yes X No.

If you have had three or more previous federal actions dismissed for any of the reasons stated above, you may not bring another civil action in forma pauperis unless you are under imminent danger of serious physical injury. See 28 U.S.C. § 1915(g).

C. CAUSE OF ACTION

COUNT I

1. The following constitutional or other federal civil right has been violated by the Defendant(s):
8th Amendment violation against cruel and unusual punishment.

2. Count I involves: (Check **only one**; if your claim involves more than one issue, each issue should be stated in a different count)

<input type="checkbox"/> Mail	<input type="checkbox"/> Access to the court	<input checked="" type="checkbox"/> Medical care
<input type="checkbox"/> Disciplinary proceedings	<input type="checkbox"/> Property	<input type="checkbox"/> Exercise of religion
<input type="checkbox"/> Retaliation	<input type="checkbox"/> Excessive force by an officer	<input type="checkbox"/> Threat to safety
<input type="checkbox"/> Other: _____		

3. **Supporting Facts:** (State as briefly as possible the FACTS supporting Count I, without citing legal authority or arguments. Describe exactly what each Defendant did or did not do to violate your rights.)

The Plaintiff originally filed this civil action in April 2022. The Honorable

Court dismissed the complaint with "Partial Leave to Amend" on April 29, 2022.

The Plaintiff was refused the ability to take address his sleep apnea by Defendant Kwon when the machine that was sent to FDC Honolulu was refused after it was initially approved. The Plaintiff submitted a Memo of Support for this action on, or about, May 1, 2022 addressing Defendant Kwon's knowledge of need for a CPAP machine and specific knowledge that a machine would be sent in by the Plaintiff's family. In the order issued by the Court, the dismissal states "White has not plausibly alleged that Warden Derr or Dr. Kwon knew that he was expecting a CPAP machine". While it is true that Warden Derr may not have known that the machine was being sent, Dr.

CONTINUED

4. Injury: (State how you have been injured by Defendant(s)' actions or inactions.
Continued suffering from the affects of sleep apnea

COUNT I SUPPORTING FACTS CONTINUED

Kwon most certainly did. This is evident by the Memo and attachment that was filed with the Court. Dr. Kwon referenced the fact that he consulted with the "Captain" and between the two, the CPAP machine was authorized. Defendant Kwon does not mention the name of the "Captain" in the filed medical "encounter" supplied by the Plaintiff. Had he identified the individual, the Plaintiff would have (and will in the future with a subpoena or deposition identify this individual) added this "Captain" as a defendant.

Defendant Kwon approved of the CPAP machine's use and delivery (confirmed by filed documents) yet the machine was refused and no medical device has been offered in its stead. The Plaintiff has no ability to force the acceptance of medical devices, that lies solely with Dr. Kwon.

The Plaintiff has attempted to resolve this issue with administrative remedies that have either been thwarted or outright denied. As has been alleged by a number of inmates in actions filed against FDC Honolulu staff, administrative remedies are not available on unit 5A of FDC Honolulu. Unit Manager Kris Robl specifically told inmates on April 1, 2022, that he would no longer provide BP-8's and BP-9's and would no longer process BP-9's that may be in the possession of inmates. This leaves inmates (particularly the Plaintiff) with no other remedy but the courts. Therefore, considering the available actions afforded inmates, the Plaintiff filed this action. It is important to note that the Defendant was served the original complaint in March, yet no attempt has been made by either Defendant Kwon, nor FDC Honolulu's Health Services to rectify this issue.

As indicated in the Honorable Court's dismissal, sleep apnea is a serious medical condition. The Plaintiff has demonstrated / confirmed that he possesses this condition with the medical record filed with the Court. The Plaintiff has demonstrated that he was approved for the delivery and use of the CPAP machine with the documents provided in his initial filing. The Plaintiff has demonstrated that FDC Honolulu rejected the supply of this machine with the document provided with his initial filing that stated he lacked authorization. As authorization rests with Defendant Kwon, the Plaintiff must conclude that authorization was rescinded. The Plaintiff, as an inmate lacks the ability to obtain additional facts at this moment, but if allowed to proceed, intends to depose and subpoena staff to not only verify his claims, but also identify additional defendants. Nevertheless, the Plaintiff feels that he has met the burden to proceed with the documentation that he provided. If the Defendant possesses evidence that contradicts the Plaintiff, the Plaintiff asks this Court to allow the action to proceed and order a response by the Defendant to address the Plaintiff's allegations.

COUNT II

1. The following constitutional or other federal civil right has been violated by the Defendant(s):

2. Count II involves: (Check **only one**; if your claim involves more than one issue, each issue should be stated in a different count) ☐ Mail ☐ Access to the court ☐ Medical care

- ☐ Disciplinary proceedings
 ☐ Property
 ☐ Exercise of religion
 ☐ Retaliation
☐ Excessive force by an officer
 ☐ Threat to safety
 ☐ Other: _____

- 3. Supporting Facts:**(State as briefly as possible the FACTS supporting Count II, without citing legal authority or arguments. Describe exactly what each Defendant did or did not do to violate your rights.)

[illegible]

4. Injury: (State how you have been injured by Defendant(s)' actions or inactions.

COUNT III

1. The following constitutional or other federal civil right has been violated by the Defendant(s):

2. Count III involves: (Check **only one**; if your claim involves more than one issue, each issue should be stated in a different count) ☐ Mail ☐ Access to the court ☐ Medical care

- ☐ Disciplinary proceedings ☐ Property ☐ Exercise of religion ☐ Retaliation

- ☐ Excessive force by an officer ☐ Threat to safety ☐ Other: _____

- 3. Supporting Facts:** (State as briefly as possible the FACTS supporting Count III, without citing legal authority or arguments. Describe exactly what each Defendant did or did not do to violate your rights.)

This image shows a single sheet of white paper with horizontal blue or grey ruling lines. The lines are evenly spaced and run across the width of the page. There are approximately 20 lines visible. The paper appears to be a standard notebook page.

4. Injury: (State how you have been injured by Defendant(s)' actions or inactions.

(If you assert more than three Counts, make a copy of this (blank) page and provide the necessary information.)

D. REQUEST FOR RELIEF

State briefly exactly what you want the Court to do for you. Make no legal arguments. Cite no cases or statutes.

\$7,500.00

I understand that a false statement or answer to any question in this complaint will subject me to penalties of perjury. I DECLARE UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE UNITED STATES OF AMERICA THAT THE FOREGOING IS TRUE AND CORRECT. See 28 U.S.C. § 1746 and 18 U.S.C. §1621.

Signed this 5th day of May, 2022.
(month) (year)



(Signature of Plaintiff)

ADDITIONAL PAGES

All questions must be answered concisely in the proper space on the form. If needed, you may attach no more than **fifteen (15) additional pages**. Number these pages in relation to the final page number of the section that is being extended (i.e. additional defendants' pages should be numbered "2A, 2B, etc.," additional previous lawsuits' pages "4A, 4B, etc.," additional claims should be numbered "7A, 7B, etc." This form, however, must be completely filled in to the extent applicable.